

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 844 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

KARADIA JESING RAMA

Versus

KARADIA BHIKHA RAMA

Appearance:

MR ND NANAVATI for Petitioners

MR KG VAKHARIA for Respondent No. 1

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 18/08/2000

ORAL JUDGEMENT

The appellants-plaintiffs by this appeal have challenged the judgment and order dated 26.12.1979 passed by the learned Jt. Civil Judge (SD) at Junagadh in Special Civil Suit No. 111/1975, whereby the learned judge was pleased to dismiss the suit. For the sake of

convenience, the parties shall be hereinafter described as plaintiffs and defendants in the present judgment.

The plaintiffs filed a suit for declaration that the suit sale-deed dated 25.1.1962 is illegal, null and void, without authority, ineffective and obtained by fraud and for partition of the suit agriculture land bearing survey no. 123 admeasuring 5 Acres, 19 gunthas and possession of 1/3rd share of each plaintiff separating the same by metes and bounds and for the mesne profits and costs of the suit. It is averred in the plaint that plaintiff no. 1 and 2 and defendant no. 1 are the real brothers, while plaintiff no. 3 is the son of deceased Vala also the brother of plaintiffs no. 1 and 2 and defendant no. 1. The defendants no. 2/1 to 2/6 are the heirs and legal representatives of deceased Rama Vala, who have purchased the suit land. It is averred that the suit agricultural land is situated in the sim of village Sultanpur of Mangrol taluka of Junagadh district which is in possession of the plaintiffs as well as defendant no. 1 and the plaintiffs were getting their share out of the yield fetched from the suit land. According to the plaintiffs, they have come to know that the defendant no. 1 has executed a sale-deed in favour of one Rama Vala by taking an undue advantage of minor age of the plaintiffs by signing for and on behalf of self and as a guardian of minor plaintiffs no. 1 and 2 for a meagre consideration amount of Rs. 25,00/, for which, in fact, he had no authority at all as their guardian. It is further the case of the plaintiffs that the defendant no. 1 disposed of the suit property without any necessity and with a view to cause damage to the right, title and interest of the plaintiffs which is the result of fraud and collusion between the vendor and vendee. According to the plaintiffs, in fact, the amount of consideration would be Rs. 25,000/ instead of Rs. 25,00/ as shown in the suit sale-deed. It is further averred that father of plaintiff no. 3 had not at all signed the suit sale-deed and even if he had signed the same, it is not binding to plaintiff no. 3 as it is against his right, title and interest. As vendee Rama Vala has expired, his heirs and legal representatives are sued in that capacity. It is finally averred that the suit sale-deed being illegal, null and void the same is not binding to them and now they do not desire to keep the property joint and hence, they are entitled to partition as well as possession of their share as well as their mesne profits.

The defendant no. 1 is duly served with the summons of the suit and has in fact, appeared through

lawyer. It appears that his lawyer in fact filed number of applications for seeking adjournments to file written statement, however, no written statement is filed on his behalf. The record further reveals that the lawyer vide ex. 46 filed a pursis regarding no instructions in the matter.

That the defendants no. 2/1 to 2/6 in their written statement ex. 26 while denying the contentions raised in the plaint, contended that their father Rama Vala purchased the suit land on payment of valuable consideration amount within the knowledge of plaintiffs no. 1 and 2 and since then, they are in possession of the suit land and are enjoying the same peacefully and openly without any obstruction from anybody. It is also contended that the plaintiffs have filed the present suit in collusion with defendant no. 1 and thus, the suit is not tenable. The said defendants by raising the plea of adverse possession contended that the suit is barred by the principle of adverse possession. It is further contended that the defendant no. 1 and his brother Vala Rama have executed the suit sale-deed and as plaintiffs no. 1 and 2 were then minors, defendant no. 1 has signed the suit sale-deed in the capacity for self and as a guardian of minor plaintiffs no.1 and 2. According to the said defendants, the defendant no. 1 being the Vahivatकर्ता at the relevant time, he had all the authority to sign in the said capacity. According to the said defendants, the suit land was purchased at the reasonable rate and the averment of the plaintiffs that it was disposed of by defendant no. 1 at a meagre rate is denied. According to the said defendants, the suit land was sold to meet the legal necessities. The said defendant also contested the suit on the ground of limitation, proper court fees, bar of estoppel by conduct and form of the suit.

On the above pleadings, the learned judge framed issues at ex. 28. After considering the evidence on record and after hearing the parties, the learned trial judge by the impugned judgment dismissed the suit by holding that the suit land is ancestral land and the sale transaction in favour of Rama Vala entered into by defendant no. 1 and the deceased Vala Rama is binding to the plaintiffs as the sale transaction was entered into out of legal necessities. The learned trial judge also held that the suit is also barred by limitation, however, the suit is not barred by adverse possession. The learned trial judge rejected plaintiffs claim that they are entitled to claim partition of the suit land and also their claim regarding mesne profits.

Mr ND Nanavati learned counsel appearing for the appellants after inviting my attention to the evidence on record, submitted that the trial court has committed an error in holding that the sale transaction in favour of deceased Rama Vala executed by defendant no. 1 is binding upon the appellants. In the submission of Mr Nanavati the defendant no. 1 was not the manager of the joint Hindu Family of the plaintiffs and as such was not entitled to sale the suit property for any legal necessities of the joint family. Mr Nanavati also challenged the finding recorded by the learned trial judge that the suit is barred by limitation.

Mr KG Vakharia learned advocate appearing for the respondents no. 2/1 to 2/6 on the other hand supported the judgment of the trial court in toto.

Since in the instant case, the defendant no. 1 Bhikha who is the elder brother of plaintiffs no. 1 and 2 alienated undivided interest and/or share of the plaintiffs, who were minor, the question arise as to whether he was competent to do so and secondly, was it out of legal necessities ? The plaintiff no. 1 - Jesing in his evidence at ex. 36 has stated that the family properties were managed by the elder brother Bhikha (defendant no. 1) and that their family was a joint one and at that time their mother was not alive. He has given details about the family members by stating that their family consisting of Bhikha, his wife Ramee and one son, Vala and his wife, he himself i.e. Jesing and his brother Govind. He specifically stated that their family was joint one and all were residing together and that Bhikha was managing the affairs of the family. Similarly, the plaintiff no. 2-Govind in his evidence ex. 49 has also admitted that Bhikha was doing the vahivat of HUF. DW-1 Randhir Rama in his evidence at ex. 59 has also stated the same thing. Shri K.H. Desai, Bank Employee, in his evidence has stated that the Bhikha has obtained loan as a Karta of the family and the bank had treated him so. In view of this evidence on record, it is clear that the family was joint one and that Bhikha (defendant no. 1) as an eldest member of the family i.e. in the capacity of eldest son was managing the affairs of the HUF. Article 236 of Hindu Law provides that the property belonging to a joint family is ordinarily managed by the father or other senior member for the time being of the family. The manager of a joint family is called Karta. Article 240 of the Hindu Law deals with the power of manager to contract debts for family

purposes and family business. Article 242 deals with alienation by manager of coparcenary property for legal necessity. Article 243 deals with what is legal necessity and provides;

- a) payment of Government revenue and of debts which are payable out of the family property;
- b) maintenance of coparceners and of the members of their families;
- c) marriage expenses of male coparceners(c), and of the daughters of coparceners;
- d) performance of the necessary funeral or family ceremonies;
- e) costs of necessary litigation in recovering or preserving the estate;
- f) costs of defending the head of the joint family (g), or any other member (h) against a serious criminal charge;
- g) payment of debts incurred for family business or other necessary purpose. In the case of a manager other than a father, it is not enough to show merely that the debt is a pre-existing debt;

Article 245 deals with the purchase money or money raised on mortgage applied by manager in part only to purposes of legal necessity. Article 255 deals with as to who may alienate coparcenary property and sub-clause(2) provides that the manager is competent to alienate the property to the extent mentioned in Article 242. Reading the above provisions, it is clear that Karta or the Manager, who either is the father or the senior member of the family i.e. eldest son is quite competent to manage the family property and alienate undivided assets or share of minor members of the family, if it is within the purview of legal necessity. Reverting back to the facts of the case, in view of the evidence on record, Bhikha - defendant no. 1, who was managing the affairs of the joint family as an elder member of the family in the capacity of the eldest son was therefore, competent to alienate the undivided interest and/or share of the minor members of the family. Still the question arises as to whether there was any legal necessity for alienation of undivided interest and/or the share of the plaintiffs. In order to decide the question of legal necessity, it is necessary to see

the financial conditions of the family of Bhikha, defendant no. 1 at the relevant time i.e. in the year 1962 when the suit sale-deed was executed. PW - 1 Jesing, in his evidence, ex. 36, has deposed that one Pragji had filed the suit against them for recovery of the debt during the time of execution of the suit sale-deed. He further admitted in his cross-examination that Bhikha who was managing the affairs of the family was not giving any share to any member of the family but was saying that he maintains the family with great difficulty and that the yield is being used in the family having children. He has further admitted in his cross-examination that there was another debt of one Amilal. Reading the evidence of plaintiff no. 1-Jesing, it is clear that there was a debt of one Pragji and Amilal, and since the family could not pay the same, Pragji was forced to file the suit for recovery of the amount. It is also clear that it was very difficult for him to maintain family from the yield received from the agriculture operations. The Bank Manager Pradyuman Girdharlal, DW-2, ex. 62, in his evidence has also deposed that Bhikha had obtained the loan of Rs. 1100/ from the Bank and had mortgaged some of the properties vide mortgage deed ex. 60 dated 22.2.1957. Similarly, the Assistant Supervisor of the Bank Shri K.H. Desai, ex. 69, has also deposed that Bhikha had ultimately closed the account by paying total three instalments at a time on 31.1.1962. This evidence of Mr Desai would go to reveal that there was a debt of the bank and the same was finally paid on 31.1.1962, immediately within about six days of execution of sale-deed i.e. 25.1.1962. Govind Punja, in his evidence, ex. 49, admitted that the financial condition of the family of Bhikha was very weak. He has also admitted that one of his brother Vala Rama was suffering from T.B. and naturally expenses were required to be incurred by the family for his medical treatment. DW-1 Randhir Rama, in his evidence, ex. 59, has stated that in fact he had visited once or twice to see the health of Vala Rama. In any case, it has come in evidence that the expenses were required to be incurred for the medical treatment of Vala Rama. PW-1 Jesing, in his cross-examination has deposed that other ancestral property of lands admeasuring in all 30 to 37 bighas were disposed of except one residential house. This fact will go to show that the financial condition of the family was very weak. In view of this evidence, I am of the opinion that Bhikha-defendant no.1 as eldest son of the joint family alienated undivided interest and/or share of the plaintiffs by executing the sale-deed of the suit land in favour of deceased Rama Vala, father of defendants no. 2/1 to 2/6 out of legal necessity as provided in Article

243 of the Hindu Law. I am also of the opinion that defendant no. 1 being the eldest son was quite competent to manage the family property and was entitled to alienate the undivided interest and/or share of the plaintiffs and, therefore, I do not find any substance in the first submission advanced by the learned counsel appearing on behalf of the appellants and, therefore, it is rejected.

As stated above, the learned trial judge also dismissed the suit by holding that it is barred by limitation by referring to the relevant provisions of the Limitation Act and applying to the facts of the case. Nothing has been pointed out by the learned counsel appearing on behalf of the appellants from the reasoning of the learned trial judge on the said question warranting different view in the matter. Suffice it to say that I am in total agreement with the reasonings of the learned trial judge and it would be mere repetition in the judgment to renarrate the same. No further contentions have been advanced on behalf of the appellants. There being no substance in this appeal, same is dismissed with no order as to costs.

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